

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1965**

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**Introduced by Assembly Member Lieu**

February 6, 2006

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An act to add Section 23038 to the Financial Code, and to add Section 823.5 to the Military and Veterans Code, relating to deferred deposit transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1965, as amended, Lieu. Deferred deposit transactions.

Existing law provides certain protections for members of the National Guard ordered into active state service by the Governor or active federal service by the President of the United States for emergency purposes, and for reservists called to active duty, as specified.

Existing law provides for the licensure and regulation of persons making deferred deposit transactions, which are transactions whereby a person defers depositing a customer's personal check until a specific date pursuant to a written agreement.

This bill would authorize service members ~~and reservists~~, *as defined*, and their spouses, to defer payments on deferred deposit transactions, as provided.

This bill would prohibit persons making deferred deposit transactions from *engaging in* specified ~~collection~~ practices with respect to those deferred deposit transactions and would require those persons to honor repayment agreements that are negotiated, as specified.

~~This bill, by requiring members of the National Guard, reservists, and their spouses to provide information under penalty of perjury in order to defer payment on a deferred deposit transaction, expands the scope of an existing crime, and thereby imposes a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 23038 is added to the Financial Code,  
2     to read:  
3     23038. (a) Any licensee that makes a deferred deposit  
4     transaction to a service member or the service member's spouse  
5     must defer payment on that deferred deposit transaction pursuant  
6     to Section 823.5 of the Military and Veterans Code.  
7     (b) A licensee shall not do any of the following:  
8     (1) Collect on a deferred deposit transaction entered into by  
9     the service member or the service member's spouse by  
10    garnishing any of the service member's military pay.  
11    (2) Contact the service member's military superiors regarding  
12    a deferred deposit transaction entered into by the service  
13    member or the service member's spouse.  
14    (3) Make a deferred deposit transaction from a specific  
15    location to a person that the licensee knows is a service member  
16    or knows is the spouse of a service member when the service  
17    member's commander has notified the licensee in writing that the  
18    specific location is designated off-limits to military personnel  
19    under his or her command.  
20    (c) A licensee shall honor the terms of any repayment  
21    agreement negotiated through military counselors or third-party  
22    credit counselors.  
23    (d) For the purposes of this section, "service member" means:

1     *(1) Active duty members of the Armed Forces of the United*  
2     *States assigned to a combat or combat support position.*

3     *(2) Officers and enlisted members of the National Guard*  
4     *called or ordered into active state service by the Governor*  
5     *pursuant to the provisions of Section 143 or 146 or into active*  
6     *federal service by the President of the United States, pursuant to*  
7     *Title 10 or Title 32 of the United States Code, for a period of 30*  
8     *days or more.*

9     *(3) Reservists of the United States Military Reserve who have*  
10    *been called to full-time active duty for a period of 30 days or*  
11    *more.*

12    SEC. 2. Section 823.5 is added to the Military and Veterans  
13    Code, to read:

14    823.5. (a) Notwithstanding any other provision of law, any  
15    service member or the service member's spouse may defer  
16    payments on any deferred deposit transaction entered into by the  
17    service member or the service member's spouse prior to the  
18    service member's date of deployment.

19    (b) To defer payments on a deferred deposit transaction, the  
20    service member or the service member's spouse shall deliver to  
21    the deferred deposit transaction provider a letter signed by the  
22    service member or the service member's spouse requesting  
23    deferral of payment on the deferred deposit transaction.

24    (c) The deferral period on the deferred deposit transaction  
25    shall be for the duration of deployment and shall apply only to  
26    any deferred deposit transaction entered into by the service  
27    member or the service member's spouse prior to the date of  
28    deployment. The amount of the deferred deposit transaction shall  
29    be due in full on the deferred deposit transaction provider's next  
30    business day immediately following the end of the deferral  
31    period.

32    (d) For purposes of this section:

33    (1) "Date of deployment" means the date that the service  
34    member met the definition of a service member as defined in  
35    subdivision (d) of Section 23038 of the Financial Code. It does  
36    not include temporary duty for the sole purpose of training or  
37    processing or a permanent change of station.

38    (2) "Service member" has the same meaning as in subdivision  
39    (d) of Section 23038 of the Financial Code.

1     ~~SECTION 1. Section 23038 is added to the Financial Code,~~  
2     ~~to read:~~

3     ~~23038. Any licensee that defers payment on a deferred~~  
4     ~~deposit transaction, pursuant to Section 823.5 of the Military and~~  
5     ~~Veterans Code, shall not collect on the deferred deposit~~  
6     ~~transaction by garnishing any of the service member's military~~  
7     ~~pay or contact the service member's military superiors regarding~~  
8     ~~the transaction. The licensee shall honor the terms of any~~  
9     ~~repayment agreement negotiated through military counselors or~~  
10    ~~third-party credit counselors.~~

11    ~~SEC. 2. Section 823.5 is added to the Military and Veterans~~  
12    ~~Code, to read:~~

13    ~~823.5. (a) Subject to subdivision (b), in addition to any other~~  
14    ~~benefits provided by law and to the extent permitted by federal~~  
15    ~~law, any service member who is in military service, or the spouse~~  
16    ~~of that service member, may defer payments on any obligation~~  
17    ~~due on a deferred deposit transaction entered into pursuant to~~  
18    ~~Division 10 (commencing with Section 23000) of the Financial~~  
19    ~~Code, by the service member or the service member's spouse on~~  
20    ~~or after the effective date of the act adding this section.~~

21    ~~(b) In order for the obligation or liability of a service member~~  
22    ~~or service member's spouse to be subject to this section, the~~  
23    ~~service member or service member's spouse or designee shall~~  
24    ~~deliver to the licensee:~~

25    ~~(1) A letter signed by the service member or the service~~  
26    ~~member's spouse, under penalty of perjury, requesting a~~  
27    ~~deferment of financial obligations.~~

28    ~~(2) If required by a financial institution, proof that the service~~  
29    ~~member's employer does not provide continuing income to the~~  
30    ~~service member while the service member is in military service,~~  
31    ~~including the service member's military pay, of more than 90~~  
32    ~~percent of the service member's monthly salary and wage income~~  
33    ~~earned before the call to military service.~~

34    ~~(c) Upon request of the service member or the service~~  
35    ~~member's spouse or designee and within five working days of~~  
36    ~~that request, if applicable, the employer of a service member~~  
37    ~~shall furnish the letter or other comparable evidence showing that~~  
38    ~~the employer's compensation policy does not provide continuing~~  
39    ~~income to the service member, including the service member's~~  
40    ~~military pay, of more than 90 percent of the service member's~~

1 ~~monthly salary and wage income earned before the call to~~  
2 ~~military service.~~

3 ~~(d) The deferral period shall be the lesser of 180 days or the~~  
4 ~~period of active duty plus 60 calendar days and shall apply only~~  
5 ~~to those payments due subsequent to the notice provided to a~~  
6 ~~licensee as provided in subdivision (b).~~

7 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
8 ~~Section 6 of Article XIII B of the California Constitution because~~  
9 ~~the only costs that may be incurred by a local agency or school~~  
10 ~~district will be incurred because this act creates a new crime or~~  
11 ~~infraction, eliminates a crime or infraction, or changes the~~  
12 ~~penalty for a crime or infraction, within the meaning of Section~~  
13 ~~17556 of the Government Code, or changes the definition of a~~  
14 ~~crime within the meaning of Section 6 of Article XIII B of the~~  
15 ~~California Constitution.~~